Joint Committee on Taxation
JCX-30-88
October 12, 1988

# COMPARISON OF DIFFERING PROVISIONS OF TECHNICAL CORRECTIONS

(Titles I and II of the House Bill and
Titles I and II of the Senate Amendment)

## I. TECHNICAL CORRECTIONS TO THE TAX REFORM ACT OF 1986

### A. Amendments Related to Title I of the Reform Act (Individual Income Tax Provisions) (sec. 101 of the House bill and sec. 101 of the Senate amendment)

The Senate amendment is the same as the House bill.

### B. Amendments Related to Title II of the Reform Act (Capital Cost Provisions) (sec. 102 of the House bill and sec. 102 of the Senate amendment)

The Senate amendment is the same as the House bill, except--

(1) the Senate amendment does not contain two provisions in the House bill (sec. 102(d)(17)(A) and sec. 102(k)(3)(BB)) relating to specific projects;

(2) the Senate amendment clarifies that refunds payable under Act section 212 (relating to cash-out of investment tax credits) generally may not be offset by the IRS against liabilities for the excise tax imposed under section 4971 for failure to meet minimum funding standards for qualified plans;

(3) the Senate amendment provides that no depreciation deduction is allowed with respect to any railroad grading or tunnel bore; the House bill provides 50-year straight line depreciation under ACRS for railroad grading or tunnel bores;

(4) the Senate amendment includes a modification of a transitional exception (sec. 102(k)(6)) for a specific project reflecting circumstances arising due to the delay in enacting technical corrections; and

(5) the Senate amendment provides that for purposes of calculating the 40 percent test for the midquarter convention, the taxpayer may elect to exclude or include property placed in and withdrawn from service in the same tax year, for taxable years beginning before 1989.

S362-22
J862-45
H782-33

**C. Amendments Related to Title III of the Reform Act (Capital Gains and Losses) (sec. 103 of the House bill and sec. 103 of the Senate amendment)**

The Senate amendment is the same as the House bill, except--

(1) the Senate amendment does not contain the provision in the House bill limiting capital losses of noncorporate taxpayers to taxable income.

**D. Amendments Related to Title IV of the Reform Act (Agriculture and Natural Resource Provisions) (sec. 104 of the House bill and sec. 104 of the Senate amendment)**

The Senate amendment is the same as the House bill.

**E. Amendments Related to Title V of the Reform Act (Tax Shelters; Interest Expense) (sec. 105 of the House bill and sec. 105 of the Senate amendment)**

The Senate amendment is the same as the House bill.

**F. Amendments Related to Title VI of the Reform Act (Corporate Provisions) (sec. 106 of the House bill and sec. 106 of the Senate amendment)**

The Senate amendment is the same as the House bill, except--

(1) the Senate amendment clarifies the treatment of warrants under a transitional rule relating to the 1976 Act version of section 382;

(2) the Senate amendment provides that the provision relating to outbound transfers applies to transfers on or after June 21, 1988, other than reorganizations for which a plan of reorganization had been adopted before June 21, 1988; the House bill applies to transfers on or after June 21, 1988;

(3) the House bill limits the net built-in gain subject to tax in the case of an S corporation to the corporation's taxable income with a carryforward of any net built-in gain in excess of taxable income for the year;

(4) the Senate amendment provides that the clarification of Treasury's regulatory authority with respect to RICs and REITs does not apply if by June 10, 1987, the board of directors of one of the parties to the reorganization adopted a resolution to solicit shareholder approval for the transaction or the shareholders or the board of directors of

one of the parties to the reorganization approved the transaction;

(5) the legislative history to the Senate amendment indicates that the Internal Revenue Service is expected to use its section 7805(b) authority to provide relief to adversely affected taxpayers in the case of a RIC or REIT disposing of built-in gain assets; and

(6) the Senate amendment provides that, except as the Secretary of the Treasury provides by regulations, any payment to a real estate investment trust under a bona fide interest rate swap or cap agreement entered into by the real estate investment trust to hedge variable rate indebtedness incurred to acquire or carry real estate assets (and gain from the sale or other disposition of such agreement) is treated as income qualifying under the 95-percent test, and the agreement is treated as a security under the 30-percent test.

**G. Amendments Related to Title VII of the Reform Act (Minimum Tax Provisions) (sec. 107 of the House bill and sec. 107 of the Senate amendment)**

The Senate amendment is the same as the House bill, except--

(1) the Senate amendment provides that the effective date of the provision relating to incentive stock options applies to options exercised after December 31, 1987 (rather than October 16, 1987); and

(2) the Senate amendment clarifies the depreciation treatment under the adjusted current earnings preference in the case of leased property where the taxpayer does not claim book depreciation.

**H. Amendments Related to Title VIII of the Reform Act (Accounting Provisions) (sec. 108 of the House bill and sec. 108 of the Senate amendment)**

The Senate amendment is the same as the House bill, except--

(1) the Senate amendment clarifies that an S corporation is not treated as a tax shelter for purposes of the limitation on the use of the cash method of accounting merely by reason of being required to file a notice of exemption from registration with a State agency if all corporations that offer securities for sale in the State are required to register or file a notice of exemption from registration;

(2) the Senate amendment clarifies that the four-year

spread of income applies to common trust funds required to change their taxable year;

(3) the committee report to the Senate amendment does not contain the language in the House report providing that no inference is intended concerning the propriety of any method of accounting for utility services under prior law that did not strictly adhere to the meter reading method for all customers of a taxpayer; and

(4) the Senate amendment provides that under the simplified method for allocating storage and handling costs between ending inventory and cost of goods sold, the amount of storage or handling costs included in ending inventory is to be determined by dividing the amount of storage or handling costs by the beginning inventory balance and purchases during the year and multiplying the result by the amount of costs in ending inventory that are considered purchases for the year.

**I. Amendments Related to Title IX of the Reform Act (Financial Institution Provisions) (sec. 109 of the House bill and sec. 109 of the Senate amendment)**

The Senate amendment is the same as the House bill, except--

(1) the House bill provides that, in the case of a large bank, an election made by a member of a parent-subsidiary controlled group concerning the method of recapturing an existing bad debt reserve is binding on all banks that are members of such parent-subsidiary controlled group for the taxable year of the election; the Senate amendment provides that each member of a parent-subsidiary controlled group may make a separate election concerning the method of recapturing its existing bad debt reserve.

**J. Amendments Related to Title X of the Reform Act (Insurance Provisions) (sec. 110 of the House bill and sec. 110 of the Senate amendment)**

The Senate amendment is the same as the House bill, except--

(1) the Senate amendment clarifies that the rule of prior section 825(g), eliminating loss carryovers of corporations that are exempt from tax or that elect to be taxed only on taxable investment income, continues to apply; and

(2) the Senate amendment clarifies that in the case of an interinsurer or reciprocal underwriter that reports on its annual statement reserves for unearned premiums net of premium acquisition expenses, the difference between (1) the

amount of the reserves at the end of the most recent taxable year beginning before January 1, 1987, and (2) 80 percent of the sum of the reserves as a such date and such premium acquisition expenses is to be taken into account ratably over a 6-year period as a section 481(a) adjustment.

**K. Amendments Related to Title XI of the Reform Act (Employee Benefit Provisions) (secs. 111-111B of the House bill and secs. 111-111B of the Senate amendment)**

The Senate amendment is the same as the House bill, except--

(1) the legislative history to the Senate amendment provides that any organization that maintained a section 401(k) plan before July 2, 1986, and that subsequently becomes a tax-exempt organization satisfies the grandfather rule in the 1986 Act for tax-exempt organization maintaining section 401(k) plans;

(2) the Senate amendment provides that the partial interest exclusion for loans to an employee stock ownership plan (sec. 133) is available with respect to a refinanced loan that would qualify for the exclusion but for the fact that the loan it is refinancing is a loan between corporations that are members of the same controlled group;

(3) the Senate amendment provides that the first diversification election under the ESOP diversification rules (sec. 401(a)(28)) may generally be provided in either 1988 or 1989;

(4) the Senate amendment provides that permissible rollovers from retirement bonds (sec. 409) may be delayed under rules similar to temporary Treasury rules delaying the application of the required distribution rules to individual retirement arrangements (IRAs);

(5) the Senate amendment codifies IRS Notice 88-68 by providing that section 457 does not apply to bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, and death benefit plans; and

(6) the Senate amendment does not contain the provision in the legislative history to the House bill directing the Secretary to minimize the administrative burdens required for an employer to qualify for the relief from the employee leasing recordkeeping requirements.

**L. Amendments Related to Title XII of the Reform Act (Foreign Tax Provisions) (sec. 112 of the House bill and sec. 112 of the Senate amendment)**

The Senate amendment is the same as the House bill,

except--

(1) where the House bill denies look-through treatment in determining the separate foreign tax credit limitation applicable to earnings distributed by a controlled foreign corporation to a shareholder who was not a U.S. shareholder when the earnings were derived, the Senate amendment follows the House bill but provides regulatory authority to permit look-through treatment in a case where the shareholder is a minority U.S. shareholder in the controlled foreign corporation;

(2) the Senate amendment provides that gain derived by a U.S. resident on distributions in liquidation of a possession corporation that derived more than 50 percent of its gross income from an active trade or business in that possession over the prior three years shall be foreign source income subject to a separate foreign tax credit limitation;

(3) the Senate amendment clarifies a House bill provision, which conforms the treatment of gains on sales of stock in foreign corporations that are controlled foreign corporations under the captive insurance rules with the treatment accorded to gains on sales of controlled foreign corporation stock in general, so that the provision is effective for gains on sales of stock in foreign captive insurance companies regardless of whether those companies have elected to treat their related person insurance income as income effectively connected with the conduct of a U.S. trade or business;

(4) the Senate amendment provides that previously unused post-1982, pre-1987 deficits attributable to foreign base company oil related activities can be carried forward to post-1986 years to reduce income inclusions under subpart F; and

(5) the Senate amendment modifies the House bill provision regarding the treatment of unidentified conflicts between the 1986 Act and treaties in the following manner: (a) it provides a permanent rule providing that neither a provision of a treaty nor a law of the United States affecting revenue shall have preferential status by reason of its being a treaty or a law, rather than a rule providing that the 1986 Act and the technical corrections bill shall apply notwithstanding previously ratified treaties, (b) it clarifies that an item is excludable from gross income of a taxpayer pursuant to those treaty provisions that continue to operate unaffected by subsequently enacted statutes, and (c) it provides disclosure requirements, and penalties for failure to disclose, with respect to positions taken that are based on treaty provisions that pre-date tax legislation.

**M. Provisions Related to Title XIII of the Reform Act**

**(Tax-Exempt Bond Provisions) (sec. 113 of the House bill and sec. 113 of the Senate amendment)**

The Senate amendment is the same as the House bill, except--

(1) the Senate amendment provides an effective date of June 10, 1987, rather than September 25, 1985, for an amendment relating to advance refundings of pre-September 25, 1985, pension arbitrage bonds;

(2) the Senate amendment does not contain a provision (sec. 113(g)(3)(C)) relating to the scope of the tax-exempt financing of a specified sports facility;

(3) the Senate amendment (sec. 113(g)(34)) differs from the House bill by requiring that at least 900 units of student housing be built rather than at least 790 units in order for a specific project to issue tax-exempt bonds outside the $150 million bond limit imposed on 501(c)(3) organizations; and

(4) the Senate amendment does not include a provision specifying the application of the technical corrections to Title XIII of the Reform Act in accordance with section 1302 of that Act.

**N. Provisions Related to Title XIV of the Reform Act (Trusts and Estates; Minor Children; Generation-Skipping Transfer Tax Provisions) (sec. 114 of the House bill and sec. 114 of the Senate amendment)**

The Senate amendment is the same as the House bill, except--

(1) the Senate amendment provides that if no executor or administrator is appointed, qualified and acting within the United States, then any person in actual or constructive possession of any property of the decedent will be treated as the executor for purposes of the generation-skipping tax.

**O. Provisions Related to Title XV of the Reform Act (Compliance and Tax Administration) (sec. 115 of the House bill and sec. 115 of the Senate amendment)**

The Senate amendment is the same as the House bill, except--

(1) the Senate amendment provides that State legislation merely conforming to or reenacting Federal law establishing a national filing system for instruments affecting interests in personal property does not constitute a second office designated by the State for filing notices of Federal tax liens;

(2) the Senate amendment extends immunity from liability of a person honoring an IRS levy to apply not only with respect to the delinquent taxpayer but also any other person; and

(3) the Senate amendment conforms the statute of limitations rule for levies to that for liens so that if a timely proceeding in court for the collection of tax is commenced, the period during which the tax may be collected by levy shall not expire as long as the tax is uncollectible.

**P. Provisions Related to Title XVI of the Reform Act (Tax-Exempt Organizations) (sec. 116 of the House bill and sec. 116 of the Senate amendment)**

The Senate amendment is the same as the House bill.

**Q. Provisions Related to Titles XVII and XVIII of the Reform Act (Miscellaneous Provisions) (secs. 117 and 118 of the House bill and secs. 117 and 118 of the Senate amendment)**

The Senate amendment is the same as the House bill, except--

(1) the Senate amendment clarifies that the basis of a bond is increased by market discount included in income;

(2) the Senate amendment does not include the provision in the House bill which clarifies the present law exclusion from gross income of certain payments received under evironmental and conservation programs;

(3) the Senate amendment does not contain the provision in the House bill deleting the provision of the 1986 Act regarding the compensation of ocean freightforwarders; and

(4) the Senate amendment corrects a cross-reference to the gasoline tax registration and bonding procedures.

## II. TECHNICAL CORRECTIONS TO OTHER TAX LEGISLATION

### A. Superfund Revenue Act of 1986 (sec. 201 of the House bill and sec. 201 of the Senate amendment)

The Senate amendment is the same as the House bill.

### B. Harbor Maintenance Revenue Act of 1986 (sec. 202 of the House bill and sec. 202 of the Senate amendment)

The Senate amendment is the same as the House bill.

### C. Omnibus Budget Reconciliation Act of 1986 (sec. 203 of the House bill and sec. 203 of the Senate amendment)

The Senate amendment is the same as the House bill.

### D. Revenue Act of 1987 (sec. 204 of the House bill and sec. 204 of the Senate amendment)

The Senate amendment is the same as the House bill, except--

Accounting item

(1) the Senate amendment corrects an error in the House bill relating to the timing of certain refunds of required payments made by partnerships or S corporations that elect a taxable year other than the required taxable year;

Partnership item

(2) the Senate amendment includes as qualifying income of publicly traded partnerships the income from any depletable property (rather than from property eligible for percentage depletion plus oil, gas, and timber);

Corporate items

(3) the Senate amendment provides that the rule in the House bill shortening the 5-year period for the common control exception under section 384 applies where the loss corporation was not in existence for five years as well as where the gain corporation was not in existence for five years;

(4) the legislative history to the Senate amendment clarifies that, with respect to the limitation on the use of preacquisition losses to offset built-in gains, not only post-affiliation gains or losses, but also pre-affiliation gains or losses which are not subject to limitation under the general rule, are not subject to limitation upon the merger

of members of the same affiliated group;

Excise tax items

(5) the Senate amendment restores a provision of prior law, which was inadvertently deleted, exempting certain fuel used as supplies for vessels and aircraft in international commerce from the Leaking Underground Storage Tank Trust Fund excise tax;

(6) the Senate amendment clarifies the application of the wholesale dealer alcoholic beverage occupational tax in cases where a dealer in beer only also becomes a dealer in distilled spirits in a year for which tax has been paid;

Pension and employee benefit items

(7) the Senate amendment provides that, in the case of certain plan spin offs and similar transactions involving defined benefit plans (within a controlled group), assets in excess of the benefits that would have been provided immediately before the transaction (calculated as if the plan then terminated) are allocated on a proportional basis with exceptions (a) for plans that are terminated after spin off, (b) for plans that are spun off from a multiple employer plan if, after the spin off, no employer (or member of the same controlled group) maintaining the multiple employer plan maintains the spun-off plan, and (c) for multiemployer plans; and

(8) the Senate amendment provides that (a) the amount required to be reported for a year with respect to an employee with respect to dependent care assistance is the amount the employee incurs for dependent care assistance during the year, and (b) an employer may treat an amount electively contributed by an employee under a cafeteria plan for dependent care assistance for a year as an amount incurred for dependent care assistance by the employee for the year.

Estate freezes

For comparison of provisions relating to estate freezes, see the Conference Comparison spreadsheets.

**E. Pension Protection Act (sec. 205 of the House bill and sec. 205 of the Senate amendment)**

The Senate amendment is the same as the House bill, except--

(1) the Senate amendment does not contain the provision in the House bill that deletes the special deduction rule in the case of liability payments made by controlled group

members (sec. 404(g)).

**F. Excise Tax on Certain Vaccines (sec. 206 of the House bill and sec. 206 of the Senate amendment)**

The Senate amendment is the same as the House bill.